HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 518 of 2004

U.P. State Road Transport Corp. Appellant

Versus

Smt. Nanda Devi & others Respondents

Approved for reporting.

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Not approved for reporting

Date of decision 12.10.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 518 of 2004

Uttar Pradesh State Road Transport Corp. through its Regional Manager, Tanakpur, Pithoragarh

..... Appellant

versus

1. Smt. Nanda Devi W/o Sri Padam Singh Dhami
2. Master Dilendra s/o late Sri Pancham Singh Dhami through his natural guardian Smt. Nanda Devi, resident of village Mallikarjun Wad No. 1 Baseri, District Darchula Nepal.
3. Smt. Uma Joshi wife of Sri B.C. Joshi r/o Dharchula Road, Phtooragarh owner of Jeep No. UP 03/2273
4. The New India Insurance Company Ltd; through its Regional Manager, Regional Officer, Nainital Road, Haldwani ..... Respondents

Sri A.N. Sharma, Advocate for the appellant
Sri A.K. Bisht, Advocate for respondent no. 1 and 2.
Sri M.K. Agarwal for respondent no. 4

Dated: October 12, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) This appeal is against the Award dated 5.2.2003, passed by the Motor Accident Claims Tribunal, Pithoragarh, awarding a sum of Rs.4,15,000/- to the claimants.

2) The claimants Smt. Nanda Devi and her minor son preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Padam Singh Dhami in a motor vehicle accident. According to the claimants on the fateful day on 4.8.1999, the

deceased was travelling by the Jeep No. UP 03/2273 and was going to Dharchula. At about 1.00 PM at Baluwakot Bus No. UP 02-B/1735, which was coming from opposite direction and was being driven by its driver rashly and negligently, dashed the jeep. As a result of said accident Padam Singh sustained fatal injuries and he succumbed to the injuries instantaneously. According to the claimants the deceased was earning Rs.4,500/- per month and he was giving Rs.3,000/- per month to the claimants for family expenses. The claimants have claimed compensation of Rs. Ten lakhs.

3) The owner of the Jeep, Smt. Uma Devi in her written statement has submitted that the accident did not take place due to rash and negligent driving of the Jeep but the accident had taken place due to the rash and negligent driving by the Bus Driver.

4) The insurer of the Jeep, namely the New India Assurance Company has filed written statement and has submitted that as the accident took place due to rash and negligent driving by the Bus Driver, the appellant U.P.S.R.T.C. is liable to pay compensation to the claimants.

5) Appellant U.P. Road Transport Corporation in its written statement has expressed ignorance about the accident. The appellant has denied that Bus No. UP 03/2273 was involved in the accident.

5) In order to prove their case, the claimants have examined claimant P.W. 1, Smt. Nanda Devi and P.W. 2 Sri Dan Singh and filed documentary evidence which consists copy of F.I.R. Post mortem report, certificate issued by Gaon Vikas Samiti and certificate issued by Malikarjun Sewa Samiti. The opposite party appellant examined D.W. 1 Uttam Singh, Driver and D.W.

2 Bhagwan Singh, Conductor. The owner of the Jeep Smt. Uma Joshi has examined herself as D.W.3.

5) On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to rash and negligent driving of the Bus as well as the Jeep. The Tribunal has assessed contributory negligence of 60% on the part of Bus driver and 40% on the part of Jeep Driver.

6) So far as the compensation is concerned the Tribunal has recorded a finding that at the time of accident the age of the deceased was 26 years and he was doing work of Carpenter. His monthly income was assessed at Rs.3,000/- i.e. Rs.36,000/- per annum. After deducting 1/3 of the amount for self expenses of the deceased if he would have been alive, the annual dependency of the claimants on the income of deceased was held to be Rs.24,000/-. Considering the age of the deceased a multiplier of 17 was selected and thus the amount of compensation was calculated as 24000 x 17 = Rs.4,08,000/-. A sum of Rs.2,000/- was awarded towards expenses incurred in the funeral of the deceased and a sum of Rs.5,000/- was awarded as consortium. Thus a total amount of compensation of Rs.4,15,000/- was awarded to the claimants along with pendente lite and future interest at the rate of 9% per annum.

7) Sri A.N. Sharma, the learned counsel for the appellant submitted that the Tribunal has erred in holding contributory negligence of bus driver as well as the jeep driver while the jeep driver was alone responsible for the alleged accident. The Tribunal was also not justified by selecting the multiplier of 17 while awarding the compensation. He has further argued that the amount of compensation paid to the claimants is excessive and the rate of interest is also not justified.

8) We have examined the record in the light of the submissions of the counsel for the appellant. The findings recorded by the Tribunal that the deceased Sri Padam Singh died on account of the injuries sustained in the motor vehicle accident on 4.8.1999 and that the drivers of the offending vehicles Bus and Jeep were jointly responsible for the accident are based on evidence on record. P.W.2 Dan Singh has categorically stated that he was also sitting in the Jeep when accident took place. He has asserted that the accident took place due to the negligence of Bus driver. However, later on he has stated that the Jeep driver has also contributed in the accident. In his cross examination he has stated as under:

;g dguk xyr gS fd nq/kZVuk iw.kZ:i ls jksMost dh xkMh dh xyrh ls gqbZ A [kqn dgk fd nksuks xkfM;ksa dh xyrh ls gqbZ A

9) On the close scrutiny of the evidence available on record, we are satisfied that the Tribunal has rightly held that the accident had taken place due to the rash and negligent driving by the Bus driver as well as by the jeep driver.

10) The claimants have filed certificate issued by Malikarjun Sewa Samiti, in which it has been mentioned that the deceased was getting Rs.250/- per day and was doing work of carpenter. However, the claimants have failed to prove this certificate by examining any witness. The deceased was a skilled carpenter and considering his profession, the Claims Tribunal has assessed his monthly income as Rs.3,000/- which appears just and proper. The Claims Tribunal has rightly calculated the annual income of the deceased at Rs.36,000/- and after deducting Rs. 12,000/- for his own expenses calculated the annual dependency of the claimants on the income of deceased at Rs.24,000/-. At the time of accident the age of the deceased

was 26 years and multiplier of 17 selected by the Claims Tribunal cannot be held to be excessive for assessment of compensation.

11) Apex Court in the case **U.P.S.R.T.C. vs. Krishna Bala & others [2006 (64) ALR 771]** has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under:-

> *"The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."*

12) However, in a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal should be just and proper in the circumstances of the case. The Apex Court, in the case of **T. N. State Transport Corpn. Ltd. vs. Rajapriya and others (2005) 6 SCC 236** has observed as under:

"***8.*** *The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the*

amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.

9. *The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be captalised by multiplying it by a figure representing the proper number of years' purchase.*

10. *Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."*

13) The Claims Tribunal has awarded Rs.24000 x 17 = Rs.4,08,000/- for loss of dependency. A sum of Rs.5,000/- was awarded for loss of consortium and Rs.2,000/- were awarded for the last rites of the deceased. Thus the Claims Tribunal has awarded a total sum of Rs.4,08,000 + 5,000 + 2000 =

Rs.4,15,000/- which is neither excessive nor exorbitant in the facts and circumstances of the case.

14) Accordingly, the appeal is dismissed. Any amount deposited in this Court be remitted to the Claims Tribunal concerned.

15) No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: October 12, 2006

* Dhyani